

BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

STATE OF MONTANA

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IN RE THE MATTER OF: PETITION)	
TO TRANSFER TERRITORY FROM SWEET)	OSPI NO. 254-95
GRASS COUNTY HIGH SCHOOL DISTRICT)	
TO REED POINT HIGH SCHOOL DISTRICT)	<u>DECISION AND ORDER</u>
NO. 9-9)	
)	

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PROCEDURAL HISTORY OF THIS APPEAL

This is an appeal by Reed Point High School District No. 9-9 in Stillwater County [hereinafter "Reed Point" or "Reed Point High School"] of the February 22, 1995, decision of Sweet Grass County Superintendent, Linda DeCook, denying the transfer of territory from the Sweet Grass County High School [hereinafter "Sweet Grass" or "SGCHS"] to Reed Point High School.

On November 16, 1993, the Sweet Grass County Superintendent received a petition to transfer certain territory from SGCHS to Reed Point. The petition was from fifteen residents living in the portion of Reed Point Elementary School District No. 9-9, located in SGCHS District. Because the transfer affected a joint district, the Sweet Grass County Superintendent notified the Stillwater County Superintendent, Joy Campbell.

The county commissioners of both counties certified that the petition met the requirements of § 20-6-320(1) and (2), MCA. Following proper notice, a public hearing was held on January 24, 1995. Testimony was offered by various citizens and by the superintendents and the trustees of both Sweet Grass and Reed

Point. Both districts were represented by counsel at the hearing and have proceeded as parties in this dispute.

The territory proposed for transfer is located in Reed Point Elementary District and the students living in the territory attend elementary school there. As the high school boundaries are currently drawn, the elementary district territory is divided between the two high schools. All the high school students currently living in the territory attend high school out of district at Reed Point. If the transfer were granted, Reed Point Elementary and High School would become a K-12 district.

The county superintendents issued separate findings and conclusions. The Stillwater County Superintendent found that the evidence supported the petition and she would grant the transfer. The Sweet Grass County Superintendent found the evidence did not support the transfer and she denied it. An approval and denial has the effect of denying the transfer. In the Matter of the Petition of Certain Missoula County Residents Requesting Transfer of Territory from Alberton Joint High School District No. 2, Mineral County to Frenchtown High School District No. 40, Missoula County, OSPI 214-92 (Decided March 16, 1993).

Reed Point appealed and SGCHS has participated as respondent. Sweet Grass moved to disqualify the State Superintendent from reviewing the decision. The motion was denied. Reed Point requested oral argument but later withdrew the request. Sweet Grass then requested oral argument after Reed Point's reply brief was filed. The motion was granted over Reed

Point's objection. Following several requests for extensions, oral argument was held December 20, 1995.

STANDARD OF REVIEW

The State Superintendent's review of a county superintendent's decision is based on the standard of review of administrative decisions established by the Montana Legislature in § 2-4-704 and adopted by this Superintendent in § 10.6.125, ARM. The Montana Supreme Court has interpreted § 2-4-704 to mean that findings of fact are reviewed under a clearly erroneous standard and conclusions of law are reviewed under an abuse of discretion standard. Harris v. Trustees, Cascade County School Districts No. 6 and F, and Nancy Keenan, 241 Mont. 274, 786 P.2d 1164 (1990). The petitioner bears the burden of showing that he has been prejudiced by a clearly erroneous ruling. Terry v. Board of Regents, 220 Mont. 214, at 217, 714 P.2d 151, at 153 (1986).

The State Superintendent may not substitute her judgment for that of a county superintendent as to the weight of the evidence on questions of fact. Findings are upheld if supported by substantial, credible evidence in the record. A finding is clearly erroneous only if a "review of the record leaves the Court with the definite and firm conviction that a mistake has been committed." Wage Appeal v. Board of Personnel Appeals, 208 Mont. 33, at 40, 676 P.2d 194, at 198 (1984).

Conclusions of law are subject to more stringent review. The Montana Supreme Court has held that conclusions of law are

reviewed to determine if the agency's interpretation of the law is correct. Steer, Inc. v. Dept. of Revenue, 245 Mont. 470, at 474, 803 P.2d at 603 (1990).

DECISION AND ORDER

The State Superintendent has jurisdiction over this matter under §§ 20-6-320 and 20-3-107, MCA. There is substantial, credible evidence on the record to support the County Superintendent's findings of fact. The conclusions of law are correct. The order is AFFIRMED.

MEMORANDUM OPINION

I. Two orders were issued following the hearing. The Stillwater County Superintendent concluded the transfer should be approved. The Sweet Grass County Superintendent concluded the transfer should be denied. Reed Point filed an appeal of the Sweet Grass Superintendent's order but Sweet Grass did not file a separate appeal of the Stillwater Superintendent's order. The parties now dispute whether the Stillwater Superintendent's order is subject to review. Reed Point argues that if two county superintendents agree, they issue a joint decision but if they disagree, they issue separate decisions. Reed Point maintains that only the Sweet Grass County Superintendent's decision is properly under review.

This Superintendent does not agree. County superintendents act jointly in these hearings and appeal of one superintendent's decision places both orders under review. It has been this Superintendent's practice in the past to consider the appeal of

one county superintendent's decision an appeal of the entire proceeding and that will be how this appeal is reviewed.

Section 20-6-320(8), MCA, provides that if a territory transfer affects "the boundary of any existing joint high school district . . . the duties prescribed in this section for the county superintendent must be performed jointly by such county officials." The "duties prescribed in the section" include holding a public hearing to take evidence from any resident, taxpayer, or representative of either district and issuing findings, conclusions and an order granting or denying the transfer based on "the effects that the transfer would have on those residing in the territory proposed for transfer as well as those residing in the remaining territory of the high school district." Section 20-6-320(6). Appeal of one county superintendent's order places the entire proceeding in review.

The issue raised by Reed Point, does highlight one of the flaws in the procedure established under § 20-6-320(8). The statutory procedure is not well suited to its purpose -- establishing appropriate district boundaries -- or to meaningful appellate review. The procedure lends itself to litigation between school districts. For example, Reed Point and Columbus High School were the litigants in In Re the Matter of the Petition to Transfer Territory from Reed Point Joint High School District No. 9-9 to Columbus High School District No. 6, OSPI 213-92 (Decided June 22, 1993), and now Reed Point and Sweet Grass High School are litigants.

This Superintendent must review decisions made in proceedings provided by law. The procedures provided by the statutes on territory transfers, however, raise the policy question of whether school district boundaries are being set in the public's best interest and whether public money meant for education should be spent on litigation between public entities.

II. Reed Point raises the following issues:

1. Did the Sweet Grass County Superintendent err in relying on evidence not introduced at the hearing and not in the record?
2. Do the numerous factual errors by the County Superintendent lead to a firm conviction a mistake has been made?
3. Did the County Superintendent err in her conclusions of law?

1. Evidence Not Introduced at the Hearing. Reed Point argues that the Sweet Grass County Superintendent relied on evidence not in the record to reach Findings of Fact 2, 10 and 23. A county superintendent must conduct hearings according to the Montana Rules of Evidence. The rules of evidence allow the finder to take judicial notice of widely known facts. County superintendents have the authority to take notice of judicially cognizable facts and generally recognized technical or scientific facts within the county superintendent's specialized knowledge. (ARM 10.6.115(2)(b))

A school boundary hearing is not a forum to adjudicate rights and duties between two parties; there are no "parties" in a hearing under § 20-6-320. It is a public hearing for a county superintendent to hear any resident's, taxpayer's, or

representative of either affected high school district's position on the merits of a petition filed by a majority of registered electors who reside in the territory to be transferred.

A public hearing is not a forum well suited for objections to evidence or to limiting what information comes into the record. A county superintendent is attempting to reach a reasoned decision about a school district boundary by weighing benefits and burdens. It is not reversible error for a county superintendent to rely on information within her knowledge that is accurate and relevant to the benefit/burden analysis.

The cognizable facts that the Sweet Grass County Superintendent took notice of in Findings 2, 10 and 23 -- number of registered voters, location of land, prior accreditation history, etc. -- are relevant, accurate facts that can be considered in a transfer petition. The key is accuracy and relevance. County superintendents should not wander far afield in their search for facts.

2. Factual Errors. A. Reed Point argues that the Sweet Grass County Superintendent's order has numerous factual errors. This Superintendent's review of the order does not reveal numerous factual errors. As discussed in B, Reed Point's challenges to two findings do have merit. There are, however, sufficient other findings to support the Sweet Grass County Superintendent's decision not to approve the transfer.

The transfer of territory would reduce SGCHS taxable valuation by \$197,573 and bonding capacity by 2.3%. The effect

on the general fund was estimated to be between a \$6,000 and \$10,400 reduction, which is less than 1% of SGCHS's general fund budget. Both superintendents understood that all the students living in the area currently attend Reed Point and no tuition is charged. This evidence is factually accurate and was the basis of the Sweet Grass Superintendent's decision.

What Reed Point disagrees with is the weight the County Superintendent gave to these facts. The District disagrees with the Sweet Grass County Superintendent's benefit/burdens analysis and would like this Superintendent to reach a different conclusion. A reviewer, however, does not have the power to substitute her judgment for that of the trier of fact who heard the evidence. While the State Superintendent may not agree with the importance a county superintendent attaches to a particular factor in weighing the benefits and burdens of a transfer of territory, the county superintendent has the power to make that decision.

Reed Point does not agree that the loss of a relatively small portion of territory would adversely affect SGCHS but the Sweet Grass County Superintendent concluded it would and that is within her power to decide. The County Superintendent understood how much territory was being transferred and considered the transfer to have significant detrimental effect on SGCHS.

B. This Superintendent does not agree there are numerous errors in the findings of fact, but agrees with Reed Point that findings of Fact 18 and 35 are errors. Finding of Fact 18 is

that Sweet Grass is the "dominant high school in the area." This is not supported by evidence in the record and is not upheld by this Superintendent.

Finding of Fact 35 was based on documents called affidavits (Exhibits 22-37) that were submitted in response to a letter the SGCHS Superintendent sent to property owners in the territory proposed for transfer. The usefulness of these documents as evidence and the manner of obtaining them are questionable at best. Finding of Fact 35 is not upheld.

3. Conclusions of Law. The Sweet Grass County Superintendent concluded that the burdens to Sweet Grass from the transfer outweighed the benefits to Reed Point. Reed Point argues that many of her conclusions of law are either new findings of fact or reiterations of earlier findings.

This is a drafting error not an error of law. Some of the findings of fact of both superintendents might be more accurately described as a reiteration of evidence presented. However, both orders contain findings of fact and conclusions of law that are sufficiently reviewable under the standard stated in Baldrige v. Rosebud County School District 19, 264 Mont. 199, 870 P.2d 711, 51 St.Rep 166, 13 Ed.Law 18 (1994). The Sweet Grass County Superintendent's ultimate conclusion that the negative effects the transfer would have on those residing in the remaining territory of SGCHS outweighed the benefits to those residing in the territory to be transferred is clearly stated in her

decision. This conclusion is not clearly erroneous or arbitrary or capricious.

Reed Point argues that the County Superintendent's position in this case is contrary to her position in In Re the Matter of the Petition to Transfer Territory from Reed Point Joint High School District No. 9-9 to Columbus High School District No. 6, OSPI 213-92 (Decided June 22, 1993). In that case, a transfer of territory from Reed Point to Columbus was approved by both the Sweet Grass and Stillwater County Superintendents. While it is somewhat remarkable that two county superintendents jointly approved a transfer of territory, such a decision is not binding precedent for all future hearings under § 20-6-320.

A county superintendent holding a hearing on a transfer request is suppose to determine the benefits and burdens the residents in both areas would experience because of the transfer and decide whether the benefits and burdens of the transfer to one area outweigh the benefits and burdens to the other. This is a difficult standard to apply when one decision maker is involved and may be impossible when there are two decision makers. If two county superintendents hear a matter they are suppose to act "jointly" but the statute does not explain the procedure to be followed when the superintendents, having acted jointly to hear the evidence, reach opposite conclusions in the benefit/burden analysis.

As frequently occurs in hearings held under § 20-6-320(8), the county superintendent for the district that would gain

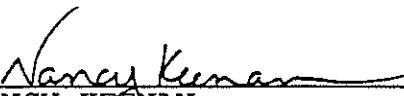
territory granted the transfer and the county superintendent for the district that would lose territory denied the transfer. Each transfer case stands on its own merits, however, and nothing in this appeal establishes that the Sweet Grass County Superintendent's decision was arbitrary, capricious or in excess of her authority.

CONCLUSION

Both districts argue that the order of the other county's superintendent is in error. It appears, however, that the superintendents simply did their best according to the procedures established in § 20-6-320, for transfers affecting two counties. Each superintendent carried out her statutory responsibility to apply the standard of § 20-6-320(6).

Applying this standard, the two superintendents came to different conclusions but that does not establish reversible error. The denial of the transfer is affirmed.

DATED this 13 day of August, 1996.



NANCY KEENAN

REEDPOIN.254

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 13TH day of August, 1996, a true and exact copy of the foregoing DECISION AND ORDER was mailed, postage prepaid, to the following:

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